

Armstrong Kellett Bartholow P.C.
Gary A. Armstrong
TX Bar No. 01316500
11300 Central Expressway, Suite 301
Dallas, TX 75243
P: 214-696-9000
F: 214-696-9001
ATTORNEY FOR PLAINTIFFS

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
Genaro Trejo and Loreto Trejo	§	Case No. 10-32200-13
	§	
Debtors	§	Chapter 13
	§	
<hr/>		
Genaro Trejo and Loreto Trejo,	§	
Plaintiffs	§	
v.	§	Adversary No. 11-03625
	§	
Household Finance Corporation III	§	
Defendant	§	

PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT

Come Now the Debtors, Genaro Trejo and Loreta Trejo, and file this Motion for Default Judgment against Defendant Household Finance Corporation III and would show the Court:

The Base Case

1. Debtors commenced their underlying Chapter 13 bankruptcy case by the filing of a voluntary petition with the Clerk of this Court on March 31, 2010. Debtors' Chapter 13 Plan and motion to value was confirmed on July 14, 2011.
2. Defendant filed its proof of claim in this case on July 28, 2010. Defendant appeared through counsel on May 24, 2010 and again, through new counsel, on December 1, 2010.

Defendant filed no objection to confirmation of the plan in this case.

Summary of the Adversary

3. Debtors seek in this adversary to strip a lien on their residential homestead property located as 12222 Murray Lane in Frisco, Texas, consisting of two adjoining lots of land.

4. The property has been valued by order of this Court at \$200,000.

5. The Plaintiffs' interest in the real estate is subject to a first lien mortgage in favor of Bank of America, N.A. in the amount of \$226,206.67, plus \$17,311.64 in arrearages, for a total debt of \$243,518.31 as of the date of filing of the petition.

6. Defendant holds a second lien mortgage, alleging a claim in the amount of \$61,046.20.

7. Because the amount of the allowed secured claim of Bank of America exceeds the value of the property, the Defendant's claim is not allowable as a secured claim under Section 506.

Default by Defendant

8. Plaintiffs' Original Complaint was filed in this case on December 8, 2011.

9. The clerk of the Court issued a Summons to the Defendant on December 9, 2011.

10. The Summons and Complaint were served on Defendant on December 15, 2011.

11. No answer or motion has been filed with the Court or received by Counsel for Plaintiffs.

12. On January 27, 2012, application was made with the Clerk of this Court to enter default against the Defendant. The Clerk entered Default on January 30, 2012.

Argument

13. The court may render a default judgment against a party who has not filed a responsive pleading or otherwise defended the suit. *See* Fed. R. Civ. P. 55(a), (b)(2); *United States v. \$23,000 in U.S. Currency*, 356 F.3d 157, 163-64 (1st Cir. 2004).

14. The court should render a default judgment against defendant because Defendant did not timely file a responsive pleading or motion. Fed. R. Civ. P. 12. Fed. R. Bankr. Pro. 7012.

15. Defendant is not a minor or an incompetent person. Fed. R. Civ. P. 55(b)(2).

WHEREFORE, the Plaintiffs respectfully request that the Court enter default judgment as follows:

- A. That the Defendant has no allowed secured claim;
- B. That the Defendant is ordered to cancel the second mortgage lien on the residential real estate of the debtors pursuant to 11 U.S.C. Section 506(d), immediately upon the entry of the Discharge Order and deliver the same to the attorney for the debtors within 20 days from the date of the entry of the said order at no charge or fee for the aforesaid cancellation and delivery;
- C. That the Defendant have an allowed unsecured claim for the amount alleged in its proof of claim;
- D. That the attorney for the Plaintiffs be awarded reasonable legal fees;
- E. That the Plaintiffs have such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Gary A. Armstrong
Armstrong Kellett Bartholow PC
TX Bar No. 01316500
11300 Central Expressway, Suite 301
Dallas, TX 75243
P: 214-696-9000
F: 214-696-9001
ATTORNEY FOR PLAINTIFFS